Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MB Docket No. _____
Table of Allotments,	)	RM-_____
FM Broadcast Stations	)	
(Stamford, Connecticut and	)	
Port Chester, New York)	)	

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To: Office of the Secretary
Attn: Audio Division, Media Bureau

PETITION FOR RECONSIDERATION

Cox Radio, Inc. ("Cox"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules,[1] hereby petitions for reconsideration of the decision of the Audio Division (the "Division") dismissing Cox's above-referenced Petition for Rule Making (the "Petition").[2] In the Petition, Cox proposed to reallot Channel 244A from Stamford, Connecticut, to Port Chester, New York, for use by WKHL(FM) as Port Chester's first local service. As a pre-1964 grandfathered, short-spaced Class A station, WKHL(FM) is permitted to change its community of license at its current transmitter site.[3] In its Letter, the Division dismissed Cox's Petition based on an alleged failure of WKHL(FM) to provide the community of Port Chester with a 70 dBu city-grade service contour as required by Section 73.315(a). In the Petition, Cox

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[1] 47 C.F.R. § 1.429 (2004).

[2] Letter dated July 6, 2005, from John A. Karousos, Assistant Chief, Audio Division, Media Bureau, to Kevin F. Reed, Esq. regarding Petition for Rule Making, Stamford, Connecticut, and Port Chester, New York, Channel 244A.

[3] *See, e.g., Worcester and Westborough, MA,* 18 FCC Rcd 23750 (2003), *Newnan and Peachtree City, GA*, 7 FCC Rcd 6307 (1992).

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demonstrated that the Channel 244 facilities at WKHL(FM)'s current site would encompass Port Chester with the requisite 70 dBu contour both under the FCC's predicted contour method utilizing uniform terrain and under the FCC's predicted contour method considering actual terrain.[4] Therefore, under either scenario, the Division should have found that the proposed community of license change would satisfy the Commission's rules. As described herein, the Division's dismissal of the Petition was in error and contrary to its own precedent.

I. THE PROPOSED CHANNEL 244A FACILITY'S PREDICTED CONTOUR ENCOMPASSES PORT CHESTER WITH THE REQUISITE 70 DBU CONTOUR.

In proceedings to amend the FM Table of Allotments, the FCC's longstanding policy is to assume maximum facilities for all stations (except Class C stations) when evaluating signal coverage.[5] The FCC explicitly has stated: "At the allotment stage, we determine coverage by utilizing the maximum power for the class and the antenna height above average terrain."[6] In doing so, the FCC assumes that the station's coverage contour is a circle with a defined radius and measures the radius outward from the hypothetical transmitter site in the direction of the proposed community to determine if the far boundary of the community is within the length of the circle's radius.[7] The FCC has applied this policy of utilizing maximum facilities to allotment

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[4] Petition at p. 3, n.9 and Technical Exhibit at Figure 1, Sheet 2 of 2.

[5] *See, e.g., Susanville, Quincy, Corning, and Portola, CA*, DA 04-3515, ¶ 4 (2004) (assuming maximum facilities of a Class A FM station when evaluating compliance with coverage of a community of license); *Coon Valley and Westby, et. al., MN*, 15 FCC Rcd 10069, ¶ 5 (2000) (same); *Laredo, Texas,* 15 FCC Rcd 19056, ¶ 4 (2000) (same); *Harrisburg and Albermarle, NC,* 11 FCC Rcd 2511 (1996) (discussing the appropriateness of utilizing maximum facilities to determine coverage areas for allotment purposes); *Greenup, KY and Athens, OH*, 4 FCC Rcd 3843 (1989) (same).

[6] *Cloverdale, Montgomery and Warrior, AL*, 15 FCC Rcd 11050, ¶ 6 (2000).

[7] *Milano, TX*, 19 FCC Rcd 8474 (2004).

cases when evaluating the community of license coverage of a grandfathered, short-spaced station that was operating below maximum power.[8]

In accordance with Commission precedent, Cox demonstrated in its Petition that utilizing maximum power for the class and antenna height above average terrain, the Channel 244 facilities at the current site would encompass Port Chester with the requisite 70 dBu contour.[9] The attached Technical Statement revisits this analysis and reiterates this conclusion.[10] As stated in the attached Technical Statement, the furthest point of Port Chester is located 14.2 kilometers from the existing WKHL(FM) transmitter site. An analysis of the maximum Class A 70 dBu contour assuming uniform terrain illustrates that the distance of the radius of the 70 dBu contour is 16.2 kilometers.[11] This radius exceeds the distance to the furthest point of the Port Chester city limits. Therefore, utilizing the policy of assuming maximum facilities at the allotment stage, WKHL(FM) squarely meets the community of license coverage requirement.

In accordance with well-established FCC precedent, Cox in its Petition thus demonstrated that its allotment proposal would encompass Port Chester with the requisite 70 dBu contour utilizing maximum facilities. By dismissing the Petition, the Division ignored precedent by not utilizing maximum Class A facilities for Channel 244 when evaluating WKHL(FM)'s community of license coverage of Port Chester.

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[8] *See Allegan and Otsego, MI*, 15 FCC Rcd 10656, ¶ 3 (2000) (assuming maximum Class A facilities of 6 kilowatts of effective radiated power and 100 meters of antenna height above average terrain in evaluating the compliance of an allotment proposal of a grandfathered, short-spaced FM station.)

[9] Petition at p. 3, n.9 and Technical Exhibit at Figure 1, Sheet 2 of 2.

[10] *See* Technical Statement attached as Exhibit A.

[11] *See id.* at Figure 1.

II. WKHL(FM)'S ACTUAL CONTOUR ALSO ENCOMPASSES PORT CHESTER.

Even if the Division had announced a change in its policy of utilizing maximum facilities for allotment proposals, the Division should have found that Cox's proposal complied with the community of license coverage requirements based on Cox's showing in its Petition that WKHL(FM)'s predicted contour, utilizing the FCC's F(50,50) curves and considering actual terrain, encompasses Port Chester. In the Petition, Cox clearly stated that it was proposing the community of license change for WKHL(FM) at its current transmitter site. Indeed, as a grandfathered, short-spaced station, WKHL(FM) may only propose the community of license change at the current site under FCC precedent.[12] Under the FCC's rules and policies, WKHL(FM) also may make the community of license change without being subject to competing applications.[13]

Given that the actual licensed facilities are in operation, the actual terrain of the radial between WKHL(FM)'s transmitter site and Port Chester is a known variable and therefore appropriate to include in the analysis. Therefore, Cox, in its Petition, provided the station's coverage contour utilizing the FCC's F(50,50) curves considering the station's actual facilities and the actual radial terrain.[14] As demonstrated in the Petition and again in the attached Technical Exhibit, such an analysis demonstrates that WKHL(FM) would encompass the community of Port Chester with a 70 dBu signal. Cox's FM allotment proposal involved an existing authorization, and the FCC had sufficient information and assurances to evaluate WKHL(FM)'s actual facilities in analyzing community of license coverage of Port Chester.

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[12] *See, e.g., Worcester and Westborough, MA,* 18 FCC Rcd 23750 (2003), *Newnan and Peachtree City, GA*, 7 FCC Rcd 6307 (1992).

[13] *See* 47 C.F.R. § 1.420(i).

[14] *See* Petition at p. 3, n.9 and Technical Exhibit at Figure 1, Sheet 2 of 2.

Given that the Division dismissed Cox's Petition, the Division apparently did not afford the requisite weight to this analysis and adhered to the use of uniform terrain in assessing the predicted contour.[15] In circumstances such as this in which the station's actual facilities are known and Cox has clearly stated in its Petition that the station is proposing the community of license change at its current site, presuming uniform terrain would be a wooden application of the FCC's policies. As the FCC itself aptly stated: "Although we reiterate that the assumption of uniform terrain at the allotment stage is generally appropriate, we believe that it would elevate form over substance to apply that assumption here, where the petitioner has taken the affirmative steps necessary to allow us to evaluate a specific site, and our rules ensure that petitioner will be the only applicant for the allotment."[16]

If, however, the Division deems it necessary, Cox herein provides additional information regarding the use of actual terrain, also often referenced as a *Woodstock and Broadway* showing.[17] As stated, Cox proposes to change the station's community of license at WKHL(FM)'s current transmitter site with no changes in its facilities. Cox obviously has reasonable assurances of site availability for the proposed site and the site has the approval of the FCC and the Federal Aviation Administration; indeed, WKHL(FM) has operated at the same site

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[15] If the Division's reasoning in not evaluating WKHL(FM)'s contour using maximum facilities was that WKHL(FM) is an existing, grandfathered short-spaced station that is not changing site or increasing power, then the Division's reasoning should lead it to utilize WKHL(FM)'s actual facilities to evaluate whether it would provide coverage to Port Chester. As described herein, the Technical Exhibit and the F(50,50) contour map provided with the Petition confirm that WKHL(FM)'s actual facilities do cover Port Chester with the requisite contour.

[16] *Woodstock and Broadway, VA*, 3 FCC Rcd 6398 (1988). *See also Tullahoma, TN and Madison, AL, Notice of Proposed Rule Making*, 15 FCC Rcd 6189, ¶ 7(2000)(same), *denied on other grounds by Report and Order*, 19 FCC Rcd 11000 (2003).

[17] *Woodstock and Broadway, VA*, 3 FCC Rcd 6398 (1988). The *Woodstock and Broadway* exception has been applied to upgrades of existing stations and also changes in community of license. *See Dos Palos, Chualar, and Big Sur, CA*, 19 FCC Rcd 1826, ¶ 20 (2004); *Freemont and Sunnyvale, CA*, 16 FCC Rcd 20530 (2001); *Tullahoma, TN and Madison, AL*, 15 FCC Rcd 6189 (2000).

for approximately nineteen years.[18] The attached Technical Statement includes a showing regarding the actual terrain between the proposed site and Port Chester. Specifically, the Technical Statement includes a map with the same F(50,50) contour that was provided in the Petition and also includes a terrain profile between the transmitter site and Port Chester. The Technical Statement also includes the same terrain data for eight radials from the transmitter site confirming the facility would comply with the maximum height above average terrain requirements and illustrating the station's antenna height above average terrain. This analysis confirms Cox's conclusion in the Petition that under an analysis of WKHL(FM)'s current facilities, taking into account actual terrain, the station would encompass the community of Port Chester with a 70 dBu contour. Accordingly, under this analysis, the Division should have accepted Cox's Petition as satisfying its technical requirements.

CONCLUSION

Under FCC precedent, the Division evaluates allotment proposals utilizing maximum facilities for the class of station for the proposed coverage contour. When a particular transmitter site is available and specified, the Division will consider the actual facilities and actual terrain in evaluating the coverage contour of the station. Cox's Petition demonstrated compliance with the community of license coverage requirements under both scenarios, and therefore dismissal of Cox's Petition was erroneous and inconsistent with applicable precedent. Based upon the

[18] *See* WKHL(FM) license, FCC File No. BLH-19870615KC.

foregoing, Cox respectfully urges the Division to reconsider its decision in this proceeding and issue a Notice of Proposed Rule Making proposing the change in community of license for WKHL(FM).

Respectfully submitted,

COX RADIO, INC.

By: _____
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August 5, 2005

EXHIBIT A

TECHNICAL STATEMENT
SUPPLEMENTIAL INFORMATION
PETITION FOR RULE MAKING

Technical Statement

This Technical Statement provides additional information with respect to the *Petition for Rule Making* seeking to delete WKHL(FM)'s Channel 244A at Stamford, Connecticut and allot Channel 244A at Port Chester, New York. Specifically, this statement will demonstrate that the WKHL(FM) 70 dBu contour from its presently licensed transmitter site (and also the proposed reference point for Channel 244A at Port Chester) encompasses the proposed city of license, Port Chester, New York, as calculated using both the (1) maximum Class A facility assuming uniform terrain and (2) actual radial terrain averages and the present licensed effective radiated power of 3 kilowatts.

Figure 1 is a map showing the FCC predicted 70 dBu contours for WKHL(FM). As can be seen from the map, both the maximum Class A 70 dBu contour assuming uniform terrain and the 70 dBu contour as calculated using the actual eight radial average terrains including an additional radial directly toward the proposed city of license, completely encompass the city of Port Chester. The furthest point of the Port Chester city limits to the existing WKHL(FM) transmitter site is 14.2 kilometers. Both the distances to the 70 dBu contour for both the maximum Class A uniform terrain and the actual radial terrain 70 dBu contours both exceed this 14.2 kilometer distance in those pertinent radial directions toward Port Chester.

Figure 2 is a tabulation of the average terrains for the eight cardinal radials and an additional radial in the direction of the city of Port Chester. As can be seen from the tabulation, the average terrain along the radial in the direction of Port Chester is 8 meters, which is substantially below the 35 meter average terrain from the eight cardinal radials.

Figure 3 is a terrain profile from the licensed WKHL(FM) in the direction of the city of Port Chester.

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August 5, 2005

Figure 1

PROPOSED PORT CHESTER 70 dBu COVERAGE CONTOUR

PETITION FOR RULE MAKING

du Treil, Lundin & Rackley, Inc., Sarasota, Florida

TECHNICAL EXHIBIT
SUPPLEMENTIAL INFORMATION
PETITION FOR RULE MAKING

Tabulation of Average Radial Terrains and Distances to FCC Predicted 70 dBu Contour for Licensed WKHL(FM)

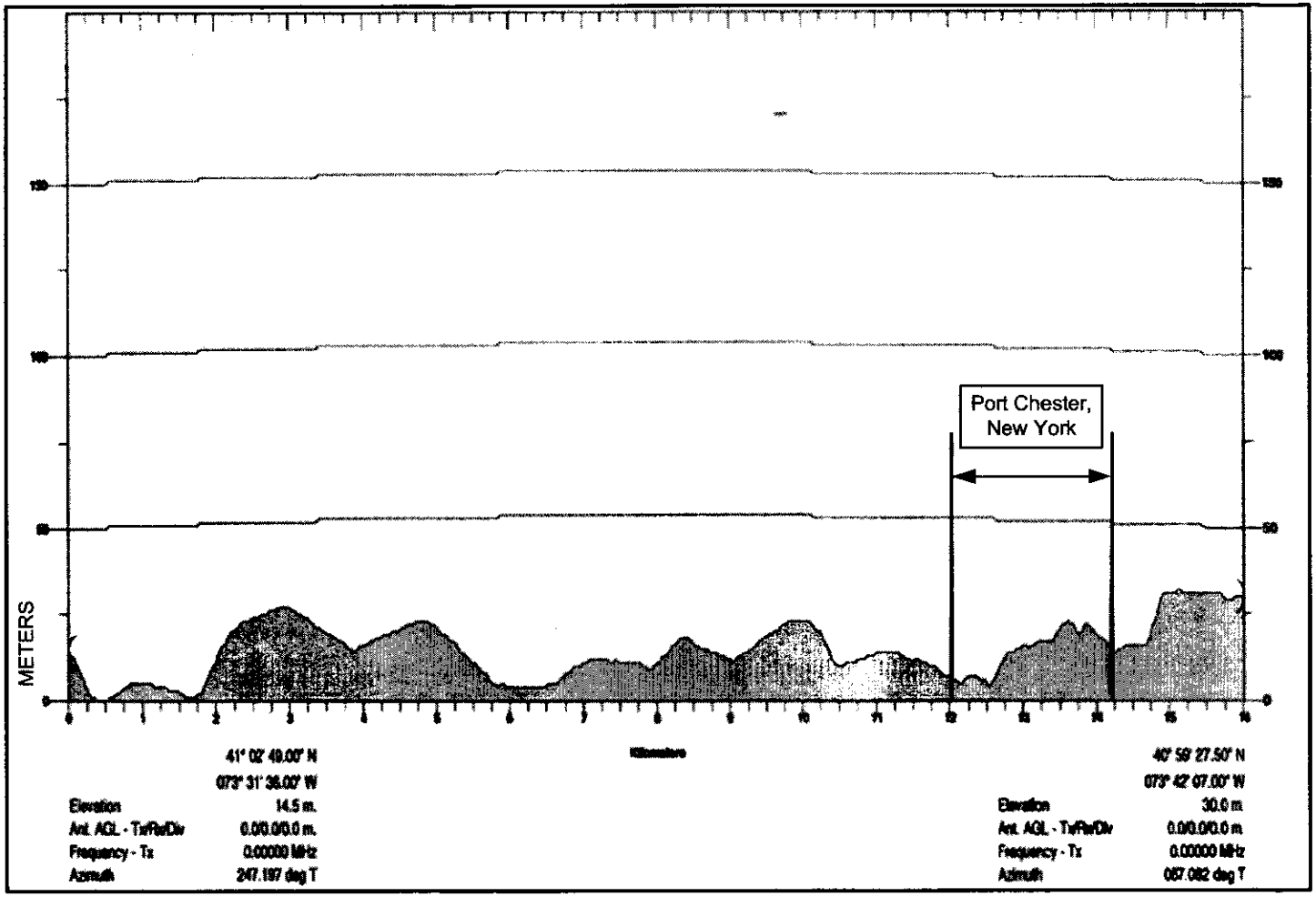
Radial (degrees T.)	Average Terrain Elevation (m)	Height Above Average Terrain (m)	Distance to 70 dBu contour (km)[1]
0	93	42	9.1
45	36	99	13.4
90	0	135	15.7
135	0	135	15.6
180	0	135	17.7
225	0	135	15.7
247[2]	8	127	15.2
270	53	82	12.3
315	97	38	8.3
Average:	35	100	13.5

Note: According to the National Atlas, the reference coordinates for Port Chester are 41-00-12 North Latitude, 73-39-48 West Longitude. From the existing WKHL(FM) transmitter site (41-02-49 North Latitude, 73-31-36 West Longitude), the bearing to the city of Port Chester reference point is 247 degrees true.

Note: The average terrain elevations for the eight cardinal radials were obtained from a previous WKHL(FM) application for construction permit, BPH-860902IF. The 247° radial average elevation was calculated based upon the terrain from the N.G.D.C. 30-second terrain database.

[1] The WKHL(FM) licensed parameters (BLH-19860113KF) of a non-directional effective radiated power of 3 kilowatts, a radiation center of 135 meters above mean sea level and an antenna height above average terrain of 100 meters are employed to calculate the distances to the 70 dBu contour.
[2] Radial from WKHL(FM) transmitter site to Port Chester. Not included in average calculations.

WKHL(FM) Port Chester, NY



TERRAIN PROFILE BETWEEN EXISTING WKHL(FM) TRANSMITTER SITE AND PORT CHESTER REFERENCE SITE

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

Figure 3